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No. 82-357

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,

-vs-

RAYMOND CLIFFORD AND EMMA JEAN CLIFFORD,
Respondents.

On Writ of Certiorari to the
Court of Appeals of the State of Michigan

SUPPLEMENT TO: MOTION TO VACATE WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED ON AN ISSUE NEVER PRESENTED OR PRESERVED FOR APPEAL IN THE LOWER COURTS

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NOW COME the Respondents, RAYMOND CLIFFORD and EMMA JEAN CLIFFORD, by and through counsel, K. Preston Oade, Jr., and supplement the motion previously filed in this cause on or about April 5, 1983, as follows:

1. That as set forth in Petitioner's initial motion, the record below clearly shows that the second issue presented for review (i.e. the good faith exception to the exclusionary rule) was never presented in the trial court; nor was it ever presented or argued in the Michigan Court of Appeals.

2. That the Petitioner's procedural default in failing to present a federal question in conformance with state procedure has become even more glaring in

view of the fact that the state courts have recently held that Michigan does not recognize a good-faith exception to the exclusionary rule. In People v David, 119 Mich App 289; 326 NW 2d 486 (1982), the Michigan Court of Appeals squarely rejected the good-faith exception on independent state law grounds, to wit:

(a) The Court pointedly noted that Michigan has applied its own exclusionary rule under the Michigan Constitution since 1922; citing the case of People v Margelis, 217 Mich 423; 186 NW 488 (1922).

(b) The Court further noted that legally seized evidence generally must be suppressed under both the United States Constitution and the Michigan Constitution. 326 NW 2d at 488.

(c) The Court specifically declined to follow the federal good-faith exception to the exclusionary rule as enunciated in United States v Williams, 622 F 2d 830 (5th Cir, 1980). The Court noted that no state has yet decided a case using the Williams good-faith exception; and found "that the Williams decision, purporting to create a 'good-faith' exception to the exclusionary rule, establishes no precedent for us to follow and is wrong as a matter of policy." 326 NW 2d at 849.

3. That the Petitioners in this case must not be permitted to evade an independent state law ground of decision by reason of their own procedural default in failing to properly raise that issue in the state courts. See Michigan v Tyler, 436 US 499, 512, n. 7 (1978).

4. That your Respondents are also prejudiced by the Petitioner's untimely attempt to have this Court re-examine the reasonableness standard of the Fourth Amendment to the United States Constitution without first having raised this issue in the state courts. Had Respondents been given the opportunity to address in the state courts the reasonableness arguments now being advanced in this Court, we could have defended with state substantive law precedent on the reasonableness clause of the Michigan Constitution, to wit:

(a) The Michigan Constitution of 1963, Article 1, Section 11, secures the person, houses, papers and possessions of every person from unreasonable searches and seizures.

(b) The warrantless search in this case cannot meet the Michigan standard. A warrantless search under the Michigan Constitution requires more than probable cause -- exigent circumstances must also be present. Department of Natural Resources v Seaman, 396 Mich 299 240 NW 2d 233 (1976); People v Lansing Municipal Judge, 327 Mich 410; NW 2d 120 (1950).

(c) That by failing to argue the reasonableness question in the Michigan Courts, Petitioners have wrongfully deprived your Respondents of an opportunity to defend on Michigan Constitutional grounds.

5. That this Court has consistently recognized the principal of comity that supports the "properly-raised-federal-question doctrine". See e.g. Picard v Conners, 404 US 270, 275 (1971). Moreover, this Court has judicially recognized the important practical reasons for insisting that federal issues first be presented in the originating state court:

> "The requirement affords the parties the opportunity to develop the record necessary for adjudicating the issue. It permits the state courts to exercise their authority, which federal courts, including this one, do not have at least to the same extent . . . The rule also insures that if there are independent and adequate state grounds that would pretermit the federal issue, they will be identified and acted upon in an authoritative manner. Finally, if the parties to state-court litigation are required to present their federal claims in the state tribunals in the first instance, those issues will be adjudicated in the state courts where necessary to dispose of the case. In most instances, such adjudgment will be supported by an opinion that may well obviate any reason for our giving plenary consideration to the case." Webb v Webb, 451 US 493, 500-501 (1981) (emphasis added).

6. In fact, virtually all of the Petitioner's arguments before this Court are being raised for the very first time and were never presented or argued in any form in the State courts. The Petitioner cannot now properly urge this Court to re-evaluate its interpretation of the reasonableness clause of the Fourth Amendment without having even given state courts an opportunity to apply Michigan Constitutional principles. Nor should the Petitioner be permitted to raise a "good-faith" exception to the exclusionary rule which has been rejected by the Michigan Courts as a matter of policy. The Petitioner's failure to raise these issues demonstrates the wisdom of the rule that a procedural default under State law constitutes an adequate and independent ground of decision barring review in this Court. Cardinale v Louisiana, 394 US 434, 438 (1969).

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Respondents request entry of an Order of Summary Affirmance, or, in the alternative, an Order Vacating the Writ of Certiorari on the grounds that it was improvidently granted on issues that are not properly before this Court.

Respectfully submitted,

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Dated: May 16, 1983